

This letter discusses voice mail services. See 86 Ill. Adm. Code 495.100. (This is a GIL).

August 23, 2004

Dear Xxxxx:

This letter is in response to your letter dated January 10, 2003, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We do hereby respectfully request a Private Letter Ruling on behalf of our client, TAXPAYER, pursuant to a Power of Attorney attached hereto, with respect to the application of the Illinois Telecommunications Excise Tax to Taxpayer's activities in Illinois.

Facts:

Taxpayer is a STATE corporation. Taxpayer is a provider of custom computer software services for the provision of voice communication services within an organization. As part of its service, Taxpayer does not provide or re-sell local, toll or wide area telephone service.<sup>1</sup> All of Taxpayer's customers are required to obtain their own basic telecommunications service and they are billed directly by their telecommunication service providers for that service.

Taxpayer offers a number of custom software products. The basic platform used to provide these services and software is a configured server ('Server') on which the desired software is loaded.

The Server can be located at the customer's business site, although the Server can also be located at Taxpayer's own off site data center. In addition, servers located at the

customer's business site can either be owned by the customer or by Taxpayer, depending upon which option a given customer chooses. Multiple Server platforms can be connected worldwide and managed through a centralized administration server.

Taxpayer's software offerings are broken down into three (3) basic product offerings. A given customer can select one or more of these products. Regardless of the product(s) chosen, each product is substantially customized for each customer. The three (3) basic software products are:

- (1) [AAA];
- (2) [BBB]; and
- (3) [CCC]

[AAA] is the software product that is geared to businesses that have older proprietary and/or multiple voicemail systems in place. [AAA] uses new standardized technology that allows for growth (both organically and through acquisitions) within an organization while still using the same platform.

[BBB] is a software that is targeted to enterprises with a substantial number of mobile workers.

[CCC] is a software product that allows for the rapid locating of employees within an organization by spoken name.

While Taxpayer has three basic software applications, substantial customization is required for each installation. Customization occurs on multiple levels. On the first level, the software must be customized to allow for the menus and prompts desired by the customer. On the second level, the software must be customized to offer the additional features and functionalities that a customer demands. On the third level, the software must be customized to integrate with existing voicemail or communication systems which are already in place. For example, the software can be customized to work with existing human resource packages a customer may have in order to allow for automatic porting of personnel and office changes. On the last level, the software must be customized to work within a given customer's network and PBX configuration. In general, Taxpayer expends between 3 person-months to a person-year performing customization per the customer's requirements. In support of the customer-intimate model, the customization does not end with the initial deployment of the software. Customization is an ongoing process, managed by careful development a process, that continues throughout the years of a consultative relationship. For one customer, Taxpayer has expended 5.3 person-years of customization over a five-year period.

In addition to the custom software, Taxpayer provides services, help-desk support, technical support on a twenty-four hour a day basis, maintenance and training. As the systems designed by Taxpayer are critical to their customer's businesses and are quite complex, system support is a critical part of the process and is included as part of each contract. Given the level of customization, the technical support personnel must learn customer-specific procedures in order to support the software. Taxpayer provides sophisticated monitoring and preventive maintenance through daily use of system reports and software tools which pinpoint system errors.

Taxpayer typically provides training through a variety of different means. Taxpayer will send trainers on-site for both initial and recurrent training. In addition, Taxpayer will sometimes train customer personnel to carry out the training function. Taxpayer also offers training on-line and at its own office.

Billing varies depending upon the contract but typically involves a substantial fixed installation fee and a monthly site license fee that is calculated by multiplying a monthly per user fee times the number of users. The monthly per user fee varies depending upon the number of users. In other words, a discount is given for greater numbers of users. The Server remains the property of Taxpayer until the end of the term of the agreement (typically 60 months) where the customer has the right to acquire the server for \$1. There is no additional lease payment due for the hardware in excess of the amount of the monthly user fees. The monthly fees are based solely on the number of users and are not based on actual usage by any given user.

#### Authorities Supporting Taxpayer's View:

The statute provides that taxes are imposed upon the act or privilege of originating in Illinois or receiving in Illinois interstate telecommunications via person in Illinois at the rate of seven percent (7%) of the gross charge for such telecommunications purchased at retail from a retailer by such person. 35 ILCS §630/4. This tax is known as the 'Telecommunications Excise Tax.' 35 ILCS §630/1.

The statute defines 'telecommunications' as, in addition to the meaning ordinarily and popularly ascribed to it, messages or information transmitted through the use of local, toll and wide-area telephone service, private line service, channel services, computer exchange services or any other form of mobile and portable one-way or two-way communications or any other transmission of messages or information by electronic or similar means. 35ILCS630/2(c). The definition of 'telecommunications' does not include value-added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. Id.

The statute provides that gross charges from the provision of telecommunication services do not include charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement. 35 ILCS 630/2(a)(3).

The regulations further support the statute by making clear that charges for data storage and retrieval services, including electronic and live answering services as well as value-added services where computer-processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission, are exempt. Title 86, Section 495.100(c). For example, the charges for computer data, protocol conversions which permit computers to exchange data, no matter which languages or protocols a computer's output may be in, and packet-switching, which groups data into packets for efficiency of transmission, would be exempt. Id.

Consistent with the statute and regulations regarding value added services other than basic transmission charges, the Department of Revenue has held that as a general proposition, charges for voice mail services are not subject to the Telecommunications Excise Tax if they are disaggregated from transmission charges and are separately identified in the books and records of the retailer. Private Letter Ruling No. ST-02-0084-GIL. When voice mail and transmission services are provided and billed by separate vendors, the voice mail charges would automatically meet the disaggregation requirement and would not be included in gross charges subject to tax. Id. It is only when both the voice mail and transmission services are provided by separate providers but the charges for both are billed by only one of the providers that the voice mail charges have to be separately identified from the transmission charges in the books and records of the providers. In other words, it is only where: (a) the voicemail services are provided by a business also providing transmission services or, (b) the transmission services are billed by provider of voicemail services even if the transmission services are provided by another business, that a provider of voicemail services would have to be careful to disaggregate the charges for both voicemail and transmission services. See, Private Letter Ruling No. ST-98-0072.

#### Analysis:

The statute imposes a tax on telecommunications that are sold at retail. The statute further defines the term 'telecommunications' so as to exclude value-added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. Taxpayer provides its Illinois customers with custom software and related installation and support services. The custom software offers a variety of applications that act upon the form, content, code and protocol of incoming and outgoing telecommunications. Taxpayer does not provide or resell any basic transmission services. Illinois customers are required to obtain their transmission services from third party vendors. The software Taxpayer provides only manipulates transmission content in order to offer a value-added product. As such, the software and associated services offered by Taxpayer to its customers are outside the definition of the term 'telecommunications' as that term is used in 35 ILCS §630/4. As such, all charges by Taxpayer for its software and services should not be subject to the Illinois Telecommunications Excise Tax.

In the alternative, even if the software and services are deemed to constitute the provision of telecommunication services, the definition of gross charges clearly excludes charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content, including electronic answering services. Separately stating the charges on the bill for such services would not be required in this case as Taxpayer's bills do not include any charges for transmission services, whether provided by Taxpayer or a third party. As such, all charges by Taxpayer for its software and services should not be subject to the Illinois Telecommunications Excise Tax.

#### Representations

The authorities cited above are the only Illinois authorities on point that Taxpayer is aware of and Taxpayer is not aware of any authorities that are contrary to the authorities cited herein or its views as set forth in the analysis above.

As of the date hereof, Taxpayer is neither undergoing an audit nor does it have any litigation pending with the Illinois Department of Revenue.

To the best of the knowledge of the undersigned and Taxpayer (as has been represented to the undersigned), the Department of Revenue has not previously ruled on the same or a similar issue for Taxpayer (or any predecessor) and neither Taxpayer nor its representatives have previously submitted the same or similar issue to the Department of Revenue but then withdrew it before a letter ruling was issued.

We would respectfully request that the items in brackets be removed prior to public dissemination, as they constitute trade secrets of Taxpayer.

If you have any questions or need any additional information, please feel free to give me a call.

## **DEPARTMENT'S RESPONSE:**

Your client's services do not appear to involve traditional voice mail services. Because of the complex issues regarding the various technology and service applications being provided by your client in addition to its potential billing administrator services, our office has declined to issue a Private Letter Ruling on the various services presented in your request. We hope that the following general information will help you provide your client with guidance regarding its Illinois telecommunications tax liabilities, if any.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495.100 et seq. As a general proposition, charges for voice mail services are not subject to Telecommunications Excise Tax if they are disaggregated from transmission charges and separately identified in the books and records of the retailer. Regulation 86 Ill. Adm. Code 495.100(c) states in part that: "Charges for answering services, for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer." If voice mail charges are not disaggregated from transmission charges, they are subject to tax.

When the same retailer provides voice mail and transmission services, the voice mail charges are subject to tax unless they are disaggregated and separately identified from the transmission charges in the books and records of the retailer. When voice mail and transmission services are provided by separate providers, and billed by the separate providers, the voice mail charges would meet the disaggregation requirement and would not be included in gross charges subject to tax. When voice mail and transmission services are provided by separate providers but charges for both are billed by one of the providers, the voice mail charges would meet the disaggregation requirement and would not be included in gross charges subject to tax as long as they can be separately identified from the transmission charges in the books and records of the providers.

Please note that sales of "canned" computer software are generally taxable retail sales in Illinois. Sales of canned software are taxable regardless of the means of delivery. For instance, the transfer or sale of canned computer software downloaded electronically would be taxable.

However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See subsection (c) of 86 Ill. Adm. Code 130.1935. Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See subsection (c)(3) of Section 130.1935.

In addition, if transactions for the licensing of computer software meet all of the criteria provided in subsection (a)(1) of Section 130.1935, neither the transfer of the software or the subsequent software updates will be subject to Retailers' Occupation Tax liability.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.

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<sup>1</sup> While Taxpayer does not presently provide or re-sell any local, toll or wide area telephone service, it is possible that at some time in the future Taxpayer may desire to serve as a billing administrator as part of its service to customers. Under this arrangement, Taxpayer would make payment to the telecommunication company on behalf of its client and would then be reimbursed by its client for that amount plus a possible service fee. Taxpayer respectfully requests that as part of this ruling, that the Illinois Department of Revenue rule as to whether this arrangement would subject Taxpayer to the Illinois Telecommunications Excise Tax.